Supreme Court, U.S.
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No. _____

IN THE

Supreme Court of the United States

October Term, 1986

KAMIS KHADAFY, SEPH AL-ARAP KHADAFY, and RICHARD YOUNG,
Petitioners,

v.

RONALD REAGAN, CASPAR WEINBERGER, WILLIAM CASEY, JOHN DOE I, and JOHN DOE II,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

RICHARD YOUNG
Petitioner and Next Friend of the infant Petitioners Khadafy

Acting Pro Se

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May, 1987

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QUESTIONS PRESENTED

1. On a motion to dismiss, may a federal court disregard the plaintiffs' narrowly drawn factual allegations and prayer for relief, substituting therefor the court's own fictional version of facts which plaintiffs did not allege and of relief which plaintiffs did not request?

2. Where plaintiffs have specifically alleged that defendant federal officials acted without any lawful authority and in violation of several specified federal statutes, may a federal court dismiss on the ground that defendants acted within the scope of their discretionary executive powers, without identifying any enumerated power which might support defendants' actions?

3. Where plaintiffs have stated a claim upon which relief may be granted, and defendants tender a "political question" defense avoiding the merits of plaintiffs' claim, may a federal court adopt defendants' unsupported factual assertions as to the politically "sensitive" nature of their conduct and dismiss plaintiffs' complaint, without any consideration of the six factors which this Court has established for the proper determination of a "political question" defense?

4. Where the President has elected to promulgate an Executive Order which unqualifiedly prohibits assassination by any federal official, can a direct violation of that Order be a lawful, discretionary executive action which is immune from judicial review?

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v.

RONALD REAGAN, CASPAR WEINBERGER, WILLIAM CASEY, JOHN DOE I, and JOHN DOE II,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

The petitioners respectfully pray that a writ of certiorari issue to review the order and judgment of the United States Court of Appeals for the Tenth Circuit, entered in this proceeding on February 13, 1987.

OPINION BELOW

No opinion was rendered by either of the courts below. The per curiam Order and Judgment of the Court of Appeals, set forth in Appendix A, simply affirmed the judgment of the District Court "for the reasons set forth in its order entered September 15, 1986." The Order of dismissal by the District Court is set forth in Appendix B.

JURISDICTION

The final Order and Judgment of the Court of Appeals, sought here to be reviewed, was entered on February 13, 1987. This Court's jurisdiction is invoked pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

This case involves a violation by defendants of Executive Order No. 12333, Part 2.11, 50 U.S.C. § 401, which provides:

> "*Prohibition on Assassination.* No person employed by or acting on behalf of the United States Government shall engage in, or conspire to engage in, assassination."

The case also involves a number of federal constitutional and statutory provisions which are too numerous and lengthy to set forth verbatim at this juncture, and which therefore are set forth verbatim in Appendix C. The citations of these provisions are as follows: U.S. Const., Art. I, Sec. 8; U.S. Const., Art. II, Sec. 3; 10 U.S.C. § 918; 18 U.S.C. §§ 371, 872, 956, 960, 1117, and 1385; 50 U.S.C. § 1541(c); United Nations Charter, Ch. I, Art. 2, Secs. 3 and 4, 59 Stat. 1037; and United Nations Charter, Ch. VI, Art. 33, Sec. 1, 59 Stat. 1042.

STATEMENT OF THE CASE

The petitioners filed a complaint joining separate claims by petitioners Khadafy and by petitioner Young. (Complaint pp. 1-14, and pp. 15-21.) The District Court dismissed the complaint and all claims therein, without differentiation between the separate claims of the several petitioners, on the same "political question" rationale. (*See* District Court's Order, p. 2, in Appendix B hereto.) Solely for purposes of simplifying this Petition for Certiorari, and without waiving petitioner Young's claims asserted below, only the claims of the petitioner Khadafy are presented in this Petition for review.

This is an action by and for two children under the age of five years, brought in their behalf by a next friend acting pursuant to Rule 17(c) of the Federal Rules of Civil Procedure. Petitioners ask the court to declare unlawful and violative of their rights a recent bombing attack by the respondents upon the family residence of the infant petitioners Khadafy, in which attack the respondents seriously injured the two petitioning children and killed their baby sister. The petitioners further ask the court to enjoin the respondents from carrying out their more recent threats to conduct similar assassination attempts upon the Khadafy family at any future time of the respondents' choosing. (Complaint, pp. 1-2.)

The respondents invoked the jurisdiction of the trial court under 28 U.S.C. § 1331, alleging violations by the respondents of certain provisions of federal law set forth in the complaint and cited above, under *Constitutional and Statutory Provisions.* In addition, the petitioners invoked the pendent jurisdiction of the court with respect to certain non-federal claims arising out of the same operative facts giving rise to petitioners' federal claims, such non-federal claims being premised upon various specified violations of the law of the District of Columbia, from whence and within which the respondents conspired

to and did in fact set in motion their bombing attack upon the family residence of the infant petitioners Khadafy. (Complaint, pp. 2, 4-12.)

The petitioners Khadafy are children three and four years of age, who are Libyan citizens resident in Tripoli, Libya. The children's natural parents are living but are not in a position effectively to assert their children's interests in an American court. Consequently, the interests of the Khadafy children are being asserted in this case by a next friend, Richard Young, acting pursuant to F.R.C.P. 17(c). (Complaint, p. 3.)

The respondents Reagan, Weinberger, and Casey are (or were, at the time of filing, in the case of Casey) federal officials serving respectively as President, Secretary of the Department of Defense, and Director of the Central Intelligence Agency. The respondents Doe are federal officials whose true names are as yet unknown to the petitioners, but whose true identity may be established from certain facts already known to petitioners. John Doe I is a U.S. Air Force F-111 pilot who was ordered to and did in fact drop several 2,000-pound bombs on or in close proximity to the family residence of the infant petitioners and their father, Colonel Muammar Khadafy, on April 15, 1986, at 2:00 a.m. (Libyan time). John Doe II is the bombardier who flew with John Doe I at the same place and time, and who reportedly released the F-111's bombs with the statement: "These bombs are for you, Colonel." Each of the respondents is sued both in his official capacity and individually, as a person who acted under color of law but who acted beyond or contrary to his lawful authority or in an unconstitutional manner. (Complaint, pp. 3-4.)

Over a period of at least several days prior to April 15, 1986, each and all of the respondents did combine, conspire, aid and abet each other in a common plan to detonate several thousand pounds of high explosives in or as close as possible to the Khadafy family residence. Through information gathered

primarily by respondents Casey and Weinberger, and at the direction of respondent Reagan, all of the respondents were well aware that the infant petitioners were likely to be asleep in their family residence, along with their parents and siblings, at the 2:00 a.m. time selected by the respondents for their bombing attack upon petitioners' home. The respondents were further aware that the probable effect of dropping several 2,000-pound bombs on petitioners' home would be to kill or seriously injure some or all of the Khadafy family. Notwithstanding such prior knowledge of the likely lethal effect of their planned bombing attack, the respondents did with premeditation, deliberation, and malice aforethought intentionally detonate at least six thousand pounds of high explosives in or within a few meters of petitioners' home, killing their baby sister and hospitalizing the infant petitioners with serious injuries. (Complaint, pp. 4-5.)

The foregoing conduct of the respondent federal officials was beyond their lawful authority, there being no provision in the Constitution or laws of the United States which authorizes any federal official deliberately to kill or injure small children such as the petitioners. (Complaint, p. 5.)

The foregoing conduct of respondents was in direct violation of respondent Reagan's Executive Order No. 12333, Part 2.11, which expressly provides that "no person employed by or acting on behalf of the United States Government shall engage in, or conspire to engage in, assassination." (Complaint, p. 6.)

The foregoing conduct of respondents was in direct violation of several federal criminal statutes, including 10 U.S.C. § 918, and 18 U.S.C. §§ 371, 872, 956, 960, 1117, and 1385. (Complaint, pp. 8-11.)

The foregoing conduct of respondents was in direct violation of several other federal statutory provisions, including the War Powers Resolution, 50 U.S.C. § 1541(c); the United Nations

Charter, Ch. I, Art. 2, Secs. 3 and 4, 59 Stat. 1037; and the United Nations Charter, Ch. VI, Art. 33, Sec. 1, 59 Stat. 1042. (Complaint pp. 7-8.)

The foregoing conduct of respondents and particularly of respondent Reagan was contrary to the mandate of Article II, Section 3 of the Constitution, which commands that the President "take care that the laws be faithfully executed." (Complaint, p. 6.)

Because the foregoing *ultra vires* conduct of the respondents violated both federal criminal laws and certain specified criminal laws of the District of Columbia which are calculated to protect innocent victims such as the Khadafy children from violence conducted by criminals within the United States and the District of Columbia, such conduct constitutes a *prima facie* tort the continuation of which may be enjoined by the court, where petitioners properly alleged irreparable injury. (Complaint, pp. 11-13.)

Based upon the foregoing facts and law, the petitioners prayed the trial court for injunctive relief, narrowly limited to an injunction " . . . prohibiting the defendants from further bombing or otherwise violently attacking the infant plaintiffs or their family, or any place where the plaintiffs are likely to be." (Complaint, p. 14.)

Subsequent to filing their complaint, the petitioners moved the court for a preliminary injunction, asking for relief narrowly limited to an order ". . . enjoining the defendants *pendent lite* from carrying out any further bombing attacks or other acts of violence against the infant plaintiffs Khadafy or their family residence." (Motion of Plaintiffs for Preliminary Injunction, p. 1.) This preliminary injunction motion was briefed and submitted to the trial court, prior to the briefing and submission of a subsequent dismissal motion by respondents. (*See* Record below and docket entries therein.)

The respondents did not file an answer to petitioner's complaint, nor did they file any affidavits to rebut the facts established by the sworn allegations of petitioners' verified complaint. Instead, the respondents simply filed a motion to dismiss, together with supporting legal memoranda, tendering two defenses in avoidance of petitioners' claims on the merits: that petitioners lacked standing to sue, and that the "political question" doctrine precluded the court from reaching the merits of petitioners' complaint. (*See* respondents' Motion To Dismiss, and supporting legal memoranda of respondents.) Respondents' motion was briefed by both sides and submitted to the court, along with petitioners' motion for a preliminary injunction. (*See* Record below.)

Without ruling on petitioners' prior motion for preliminary injunctive relief, the District Court entered an Order dismissing petitioners' complaint. The court did not render an opinion, nor did the court make any formal findings of fact or conclusions of law. (*See* Record below.)

With reference to crucial operative facts, the trial court's dismissal Order impliedly found as fact that the infant petitioners Khadafy were persons " . . . who have been *reported to have been injured* by a recent *strike on Libya* by United States *armed forces.*" (Order, p. 1, emphasis added.) In contrast, according to the uncontroverted allegations of the complaint of petitioners, the fact is that the two Khadafy children *were seriously injured,* in a *bombing attack deliberately aimed at their family residence at an hour (2:00 a.m.) when they were likely to be there sleeping,* and in an attack *specifically authorized and conducted by the five specific federal officials named as the defendants in this case.* (Complaint, pp. 4-5.)

With reference to the vital issue of what relief was being requested by the petitioners, the trial court characterized petitioners' complaint and preliminary injunction motion as seeking to enjoin respondents " . . . *from any future strike against*

Libya." (Order, p. 1, emphasis added.) In contrast, the preliminary injunction motion that was pending before the court asked only that the respondents be enjoined " . . . from carrying out *any further* bombing attacks or other acts of violence *against the infant plaintiffs Khadafy or their family residence.*" (*See* petitioners' Motion for preliminary injunction, p. 1, emphasis added.)

In support of his decision to dismiss petitioners' complaint, the trial court did not purport to base the decision on standing grounds, as respondents had urged and petitioners had resisted. (*See* extensive arguments by both sides in legal memoranda of Record.) Instead, the trial court based his decision solely upon "political question" grounds, explaining that " . . . this complaint concerns and seeks ruling on discretionary executive actions of extremely sensitive military, diplomatic and political nature over which this court has no jurisdiction." (Order, p. 2.)

On appeal, the Court of Appeals affirmed without opinion, in a terse *per curiam* order which gave no independent rationale for that court's decision, but stated only that "the judgment of the United States District Court for the District of New Mexico is AFFIRMED for the reasons set forth in its order entered September 15, 1986." (Order and Judgment, p. 2.)

Consequently, this case comes before the Supreme Court on a factual record comprised solely of petitioners' complaint, and upon a lower court decision based solely upon the application of the "political question" doctrine to the facts alleged by petitioners.

ARGUMENT

Question 1

It has long been established by this Court that on a motion to dismiss, a federal court must accept as fact not only the express allegations in the complaint, but also any inferences which may reasonably be drawn in favor of the plaintiff. *Steele v. Bulova Watch Co.*, 344 U.S. 280 (1952).

In the instant case, the petitioners very clearly and specifically alleged that they were seriously injured by a carefully planned, premeditated bombing attack which the five named respondents personally directed precisely at the petitioners and their immediate family. (Complaint, pp. 1, 3-5, 8-10.) Petitioners further specifically alleged subsequent threats by the respondents, and particularly by respondent Reagan, to repeat such assassination attempt at any time of respondents' choosing, and alleged that petitioners would be irreparably injured unless the court were to enjoin respondents from carrying out their threats against the petitioners and their family. (Complaint, p. 13.) The petitioners asked for injunctive relief narrowly limited to an order "prohibiting the defendants from further bombing or otherwise violently attacking the infant plaintiffs or their family, or any place where the plaintiffs are likely to be." (Complaint, p. 14.) This prayer for relief was further narrowed in petitioners' preliminary injunction motion, which asked only that the respondents be enjoined " . . . from carrying out any further bombing attacks or other acts of violence against the infant plaintiffs Khadafy or their family residence." (*See* petitioners' preliminary injunction Motion, p. 1.)

In a dismissal order subsequently adopted by the court of appeals, the district court disregarded the petitioners' carefully drawn allegations and prayers for relief, and instead adopted a grossly distorted and fictionalized version of facts

that petitioners did not allege and of relief which petitioners did not seek. Thus, the court misrepresented that petitioners had been " . . . *reported to have been injured* by a recent *strike on Libya* by United States *armed forces.*" (Order, p. 1, emphasis added.) Similarly, the court misrepresented that petitioners were asking the court to enjoin respondents " . . . *from any future strike against Libya.*" (Order, p. 1, emphasis added.) In truth and in fact, entry by the court of the preliminary injunction requested by the petitioners would have left respondents free to lay waste the entire nation of Libya, provided only that respondents refrained from repeating their attempt to assassinate the petitioners and their immediate family.

The lower courts' disregard and misrepresentation of petitioners' factual allegations and prayers for relief were in egregious violation of the rule of law established by this Court in such decisions as *Steele v. Bulova Watch Co.*, 344 U.S. 280 (1952). Because a federal court of appeals has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision, the Court should grant review by way of certiorari. Rule 17.1(a).

Question 2

The petitioners clearly and concisely alleged that there is no enumerated power in the Constitution or laws of the United States, whether express or implied, authorizing the respondent federal officials to engage in the murderous conduct by which they have injured and threaten further to injure the infant petitioners Khadafy. (Complaint, p. 5, para. 8.)

Any lingering suggestions that the Executive branch of the federal government might have some sort of "inherent powers" not enumerated in the Constitution or specifically conferred

by a formal legislative enactment of Congress were surely dispelled by this Court in *Youngstown Co. v. Sawyer*, 343 U.S. 579 (1952). As the Court has always held, and merely reaffirmed in the *Sawyer* decision, under the Constitution the federal Government is a limited government of enumerated powers, and the Executive branch is merely a part of that limited government. If Executive authority cannot be found in a specific provision of the federal Constitution or statutes enacted pursuant thereto, then there simply is no Executive authority, regardless of any exigencies which might be said to argue for the necessity of such Executive power in a particularly pressing emergency. That is the teaching and the emphatic holding of this Court in the *Sawyer* case.

In the dismissal Order adopted by the court of appeals, the trial court concluded that, "as the two causes of action clearly show, *this complaint concerns* and seeks ruling on *discretionary executive actions* of extremely sensitive military, diplomatic and political nature over which this court has no jurisdiction." (Order, p. 2, emphasis added.)

It would seem obvious that before a federal official may exercise discretion with respect to a given matter, that matter must be at least arguably within some specific, enumerated source of lawful authority by which the federal official purports to be acting. Yet neither the respondents nor either of the courts below made any attempt whatsoever to specify one or more provisions of the Constitution or laws of the United States that might provide even colorable authority for the conduct by which the respondents have injured the petitioners.

Not only have respondents and the lower courts failed to identify any lawful authority for their purported "discretionary executive actions," but it is clear that such actions are directly prohibited by several federal criminal statutes, as well as respondent Reagan's own Executive Order No. 12333,

Part 2.11, which provides that "no person employed by or acting on behalf of the United States Government shall engage in, or conspire to engage in, assassination." (Complaint, pp. 6, 8-11.)

In the absence of any identification by the courts below of the Constitutional or statutory authority for the respondents' so-called "discretionary executive actions" against the petitioners, it must be assumed that the courts below concluded that the respondent federal officials have some sort of inherent power, not derived from any provision in the Constitution or laws of the United States, to murder small children in foreign countries. That conclusion is plainly in conflict with this Court's decision in *Youngstown Co. v. Sawyer*, 343 U.S. 579 (1952).

The Court should grant review under Rule 17.1(c), because the court of appeals has decided a federal question in a way in conflict with applicable decisions of this Court.

Question 3

As petitioners pointed out to the trial court in their legal memorandum in support of their motion for a preliminary injunction (Memorandum, pp. 13-18), the petitioners plainly stated a claim upon which relief may be granted in this case. Where federal officials have been and are continuing to act beyond and contrary to their lawful authority, to the irreparable injury of petitioners, there can be no question that a federal court has both the power and the duty to grant appropriate injunctive relief against such lawless conduct. *Youngstown Co. v. Sawyer*, 343 U.S. 579 (1952); *Colorado v. Toll*, 268 U.S. 228 (1925); *Philadelphia Co. v. Stimson*, 223 U.S. 605 (1912).

The courts below did not reach the merits of petitioners' claims, but instead avoided the merits by deciding the case on "political question" grounds. Thus, the trial court explained its dismissal of petitioners' complaint as follows:

> "As the two causes of action clearly show, this complaint concerns and seeks ruling on discretionary *executive actions of extremely sensitive military, diplomatic and political nature over which this court has no jurisdiction. . . .*"

(Order, p. 2, emphasis added.)

One obvious defect in the court's decision is the court's implicit finding, as a matter of pure fact or as a matter of mixed fact and law, that the respondents' conduct in this particular case was "of (an) extremely sensitive military, diplomatic and political nature." The record before the court consisted solely of the sworn allegations contained in petitioners' verified complaint: respondents adduced no facts of record whatsoever, having failed to file rebuttal afficavits to the verified complaint, and further having failed even to file an answer. (*See* Record below.) Taking petitioners' allegations as verities, and giving petitioners the benefit of any inferences to be drawn from their allegations, as the trial court was required to do by this Court's decision in *Steele v. Bulova Watch Co.*, 344 U.S. 280 (1952), there is quite simply nothing in the record to support the court's factual characterization of respondents' conduct.

Another glaring defect in the decisions of the courts below is their total failure to apply to the facts of this particular case all or any of the six factors which this Court established as determinative of any "political question" defense, in *Baker v. Carr*, 369 U.S. 186 (1962). As *Baker* should have made abundantly clear, the mere intonation by Government counsel of the magic words "discretionary executive actions of extremely

sensitive military, diplomatic and political nature" does not excuse a federal court from inquiring further into the matter.

A careful reading of this Court's decisions in *Gilligan v. Morgan*, 413 U.S. 1, 11-12 at n.16 (1973), and *Laird v. Tatum*, 408 U.S. 1, 15-16 (1972), make clear that a federal court may not lightly conclude that a case is non-justiciable under the "political question" doctrine, simply because the Executive branch resists judicial review of what it chooses to characterize as "military," "diplomatic," or "political" matters. Rather, *Gilligan* and *Laird* take care to point out that the political question doctrine embodies an exception to the general rule that a federal court has the duty to decide cases within its jurisdiction, and that this exception will be applied to preclude judicial review only after the court has carefully considered the particular facts of the case at hand and has concluded that the several factors outlined in *Baker v. Carr* collectively militate against judicial review of the particular executive actions at issue in the case at hand.

In the instant case, the trial court and the court of appeals made no attempt to evaluate how the various factors established by this Court in *Baker*, *Gilligan*, and *Laird* would or would not be satisfied by the facts of this particular case. Instead, the courts below simply adopted the unfounded, extra-record factual assertions made by Government counsel in legal argument, and then uncritically concluded that the "political question" doctrine deprived the court of jurisdiction to grant the limited equitable relief sought by petitioners. The courts below plainly did not follow the rule of law established by this Court for the decision of "political question" defenses, in such decisions as *Baker*, *Gilligan*, and *Laird*.

This Court should grant review under Rule 17.1(a), because the court of appeals has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned

such a departure by a lower court, as to call for an exercise of this Court's power of supervision. Further, because the court of appeals has decided a federal question in a way in conflict with applicable decisions of this Court, review should be granted under Rule 17.1(c).

Question 4

As petitioners' argument of the three preceding questions should have made clear, the instant case involves erroneous decisions by the lower courts on several well settled points of law which would warrant review by this Court. In some respects, however, this case must certainly be regarded as novel. For the first time in American judicial history, this Court is being asked to decide whether two small children, who have been injured in an assassination attempt by the President and other named federal officials, are entitled to declaratory and injunctive relief against similar threatened future harm by the same federal officials.

In Question 3, the petitioners posed and argued the question whether the "political question" defense tendered by the respondents was factually supported by the respondents and/or properly decided by the lower courts under the criteria established by the Court in *Baker*, *Gilligan*, and *Laird*. In Question 4, the petitioners raise the additional and novel issue of whether the "political question" doctrine may properly be deemed to preclude judicial review of executive actions which have been outlawed by a currently operative Executive Order of the Chief Executive of the United States. Petitioners respectfully suggest that this question may logically be answered only in the negative.

As this Court has repeatedly made clear in such "political question" decisions as *Baker*, *Gilligan*, and *Laird*, the political question doctrine is derived from the broader doctrine of

separation of powers, which cautions the federal judiciary from improperly intruding into the legitimate domain of one of the other branches of government, where to do so would conflict with the proper functioning of the other "political" branch. Surely there can be no such improper intrusion by the judiciary in this case, where not only are the respondent officials acting without any authority granted to them by any enumerated provision of the Constitution, but they are engaged in actions which the President has expressly and unqualifiedly prohibited in Executive Order No. 12333, Part 2.11. Where the Chief Executive has himself chosen to place assassination beyond the bounds of permissible executive action, it was not only erroneous but absurd for the lower courts to decline to exercise their jurisdiction on "political question" grounds.

This Court should grant review under Rule 17.1(c), because the court of appeals either has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way in conflict with applicable decisions of this Court.

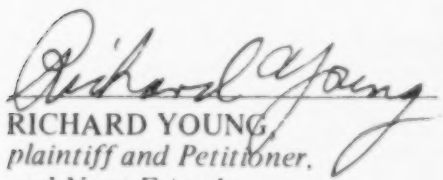
CONCLUSION

The disingenuous dismissal of a meritorious claim not only undermines public confidence in the federal judiciary, but it runs counter to the magnificent tradition and consistent courage of this Court over the past two centuries, from *Marbury v. Madison*, 1 Cranch 137, 2 L.Ed. 60 (1803), to *United States v. Nixon*, 418 U.S. 683 (1974), with perhaps the high point being marked by the Court's decision in time of war, in *Youngstown Co. v. Sawyer*, 343 U.S. 579 (1952). Many nations have laudable written constitutions which purport to limit what their rulers may do, but only this country has a Supreme Court which has had the courage to invalidate *ultra vires* conduct

by the more powerful "political" branches. If there is reason to celebrate the Constitution in this bicentennial year, it is in large part because this Court has not shirked its responsibility to decide meritorious cases within its jurisdiction, regardless of the political controversies that may surround such cases. For this reason, and for the other reasons outlined above, a writ of certiorari should issue to review the Judgment and Order of the Court of Appeals for the Tenth Circuit.

Respectfully submitted,

KAMIS KHADAFY and
SEPH AL-ARAP KHADAFY,
infant plaintiffs and Petitioners,
acting by and through their
Next Friend,



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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

FILED
United States
Court of Appeals
Tenth Circuit
February 13, 1987
Robert L. Hoecker
Clerk

KAMIS KHADAFY; SEPH AL-ARAP KADAFY; RICHARD YOUNG,
Plaintiffs-Appellants
v.
RONALD REAGAN; CASPAR WEINBERGER; WILLIAM CASEY; JOHN DOE; JOHN DOE II,
Defendants-Appellees.

No. 86-2438
(D.C. No. 86-643M)
(D. N.M.)

ORDER AND JUDGMENT

Before McKAY and SEYMOUR, Circuit Judges, and SAM, District Judge.*

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*The Honorable David Sam, United States District Judge for the District of Utah, sitting by designation.

After examining the briefs and the appellate record, this three-judge panel has determined unanimously that oral argument would not be of material assistance in the determination of this appeal. *See* Fed. R. App. P. 34(a); 10th Circ. R. 34.1.8(c) and 27.1.2. The cause is therefore ordered submitted without oral argument.

The judgment of the United States District Court for the District of New Mexico is AFFIRMED for the reasons set forth in its order entered September 15, 1986.

The mandate shall issue forthwith.

ENTERED FOR THE COURT
PER CURIAM

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

KAMIS KHADAFY, SEPH AL-ARAP KHADAFY, and RICHARD YOUNG, Plaintiffs,	)	
v.	)	No. 86-643-M Civil
RONALD REAGAN, CASPAR WEINBERGER, WILLIAM CASEY, JOHN DOE I, and JOHN DOE II, Defendants.	)	

ORDER

This matter came on for consideration on defendants' motion to dismiss. Having considered the motion and response thereto, I find that the motion is well taken and it will be granted.

Richard Young, an attorney, appears here purporting as next friend to represent two minor children of Omar Khadafy, who have been reported to have been injured by a recent strike on Libya by United States armed forces. He also appears in his own behalf as a concerned citizen. Both actions seek to enjoin the President, the Secretary of Defense, the Director of the Central Intelligence Agency and two John Does from any future strike against Libya and for a declaratory judgment establishing the respective rights and duties of the parties.

Jurisdiction is alleged to be present pursuant to Title 28, Section 1331 of the United States Code.

As the two causes of action clearly show, this complaint concerns and seeks ruling on discretionary executive actions of extremely sensitive military, diplomatic and political nature over which this court has no jurisdiction. Now, Therefore,

IT IS ORDERED that this complaint and its causes of action shall be, and hereby are, dismissed.

/s/ E. L. Mechem

SENIOR UNITED STATES DISTRICT JUDGE

APPENDIX C

VERBATIM LANGUAGE OF CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article I, Sec. 8, U.S. Const.

"The Congress shall have Power . . . to define and punish . . . Offences against the Law of Nations . . . [and] to declare War . . . ."

Article II, Sec. 3, U.S. Const.

"He [the President] . . . shall take Care that the Laws be faithfully executed . . . ."

10 U.S.C. § 918. Art. 118. Murder

"Any person subject to this chapter who, without justification or excuse, unlawfully kills a human being, when he–

(1) has a premeditated design to kill;

(2) intends to kill or inflict great bodily harm;

(3) is engaged in an act which is inherently dangerous to others and evinces a wanton disregard of human life . . .

is guilty of murder, and shall suffer such punishment as a court-martial may direct, except that if found guilty under clause (1) . . . he shall suffer death or imprisonment for life as a court-martial may direct."

18 U.S.C. § 371

"If two or more persons conspire . . . to commit any offense against the United States . . . and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined not more than $10,000 or imprisoned not more than five years, or both."

18 U.S.C. § 872

"Whoever, being an officer, or employee of the United States or any department or agency thereof, or representing himself to be or assuming to act as such, under color or pretense of office

or employment commits or attempts an act of extortion, shall be fined not more than $5,000 or imprisoned not more than three years, or both . . . ."

18 U.S.C. § 956

"(a) If two or more persons within the jurisdiction of the United States conspire to injure or destroy specific property situated within a foreign country and belonging to a foreign government or to any political sub-division thereof with which the United States is at peace . . . and if one or more such persons commits an act within the jurisdiction of the United States to effect the object of the conspiracy, each of the parties to the conspiracy shall be fined not more than $5,000 or imprisoned not more than three years, or both."

18 U.S.C. § 960

"Whoever, within the United States, knowingly begins or sets on foot or provides or prepares a means for or furnishes the money for, or takes part in, any military or naval expedition or enterprise to be carried on from thence against the territory or dominion of any foreign prince or state, or of any colony, district, or people with whom the United States is at peace, shall be fined not more than $3,000 or imprisoned not more than three years, or both."

18 U.S.C. § 1117

"If two or more persons conspire to violate section 1111, 1114, or 1116 of this title, and one or more of such persons do any overt act to effect the object of the conspiracy, each shall be punished by imprisonment for any term of years or for life." [Petitioners claim to be "internationally protected persons," as defined in section 1116 of this title, 18 U.S.C. § 1116(b)(4)(B).]

18 U.S.C. § 1385

"Whoever, except in cases and under circumstances expressly authorized by the Constitution or Act of Congress, willfully

uses any part of the Army or the Air Force as a posse comitatus or otherwise to execute the laws shall be fined not more than $10,000 or imprisoned not more than two years, or both."

28 U.S.C. § 1254(1)

"Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods: . . . By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree . . . ."

8 U.S.C. § 1331

"The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States."

50 U.S.C. § 1541(c)

"The constitutional powers of the President as Commander-in-Chief to introduce United States Armed Forces into hostilities, or into situations where imminent hostilities is clearly indicated by the circumstances, are exercised only pursuant to (1) a declaration of war, (2) specific statutory authorization, or (3) an national emergency created by attack upon the United States, its territories or possessions, or its armed forces."

United Nations Charter, Ch. I, Art. 2, Secs. 3 & 4, 59 Stat. 1037

"All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered. . . . All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.

United Nations Charter, Ch. VI, Art. 33, Sec. 1, 59 Stat. 1042

"The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and

security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice."